DECOLONIZATION

A publication
of the United Nations
Department of Political Affairs

No. 44
April 1993

THE TRUST TERRITORY OF THE PACIFIC ISLANDS (MICRONESIA) POLITICAL AND CONSTITUTIONAL DEVELOPMENT

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INTRODUCTION

Between 1946 and 1950, 11 Territories were placed under the International Trusteeship System through individual agreements between the United Nations and administering Member States. Some had been administered under the mandate of the League of Nations, some detached from defeated States as a result of the Second World War, and others voluntarily placed under the System by States responsible for their administration. One of these Territories, the Trust Territory of the Pacific Islands (Micronesia), comprising some 2,100 islands and atolls scattered over an area of approximately 7.8 million square kilometres in the western Pacific, was placed under the administration of the United States of America.

The Trusteeship Agreement for the Trust Territory of the Pacific Islands was unique in several ways. 1/ Unlike the other Trust Territories, the Trust Territory of the Pacific Islands was designated a strategic area, i.e., the Administering Authority could establish military bases and station its armed forces there and close off any part of the Territory for "security reasons". 2/ Furthermore, under the Charter of the United Nations, the Security Council, rather than the General Assembly, would oversee the administration of the Territory by the United States and have the power to approve the terms of the Trusteeship Agreement and of its alteration, and decide when the Agreement should be terminated. The Trusteeship Council, on behalf of the Security Council, would perform those functions of the United Nations relating to political, economic, social and educational matters.

In other respects, particularly as regards the obligations of the Administering Authority to the people of the Territory, the Trusteeship Agreement of the Trust Territory of the Pacific Islands was essentially identical to all others.

During the initial period of United States administration of the Trust Territory of the Pacific Islands, the pace of political, social and economic development was slow. The process of political evolution began to gain momentum in 1964 with the establishment of the Congress of Micronesia and it continued to accelerate thereafter. 3/ The progressive granting of limited self-government to local institutions in concert with negotiations regarding the future political status of the Territory, led to the Territory's deciding to divide itself as of 1980 into four political entities, each with its own constitution, known respectively as the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Palau and the Marshall Islands. 4/ By 1983, all four entities

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had made clear their desires, in referendums observed by the United Nations, regarding their future political status - the Federated States of Micronesia, Palau and the Marshall Islands, opting for free association with the United States, and the Northern Mariana Islands, for continued Commonwealth status with the United States. By its resolution 2183 (LIII) of 28 May 1986, the Trusteeship Council, at its fifty-third session, determined that the Administering Authority had fulfilled its obligations under the Trusteeship Agreement and called on it to implement the new status arrangements by 30 September 1986. 5/

Although the United States proceeded to implement the new status arrangements in conformity with the Trusteeship Council resolution, the termination of the Trusteeship Agreement was delayed because of an intractable problem arising from a conflict between the anti-nuclear provisions of the Palau Constitution and the Compact of Free Association (see below).

In the hope that the problematic issue between Palau and the United States might be resolved and permit the simultaneous termination of the Trusteeship Agreement for all four entities, the United Nations did not take a decision on the matter for several years. In 1990, however, in the continuing deadlock between Palau and the Administering Authority, the Security Council, by its resolution 683 (1990) of 22 December 1990, decided to terminate the Trusteeship Agreement for the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands. Following the adoption of that resolution, the Federated States of Micronesia and the Republic of the Marshall Islands, linked to the United States by Compacts of Free Association, became members of the United Nations in their own rights, while the Northern Marianas continued as a Commonwealth of the United States. Only Palau, which has also opted for free association with the United States, still remains under trusteeship.

The present paper reviews the history of the Trust Territory of the Pacific Islands (Micronesia) from the beginning of its colonization in the sixteenth century through the process of its political evolution during United Nations trusteeship, and discusses in depth the question of Palau.

I. BRIEF HISTORICAL OUTLINE 6/

The Trust Territory of the Pacific Islands (Micronesia) comprises three archipelagos: the Marianas, the Carolines and the Marshalls. Its first documented contact with the outside

world took place in 1521 when the expedition of the Portuguese navigator Fernão de Magalhães, also known as Ferdinand Magellan, stopped in the Marianas for food and water during its circumnavigation of the globe. Throughout most of the following five centuries, the Marianas and subsequently the other two archipelagos were controlled by a succession of foreign powers - in turn by Spain, Germany, Japan and the United States. For most of that time, the indigenous population had few rights and was subjected to conditions of varying harshness.

Micronesia officially entered its colonial period in 1565 when Miguel Lopez de Legazpi, the first Spanish Governor-General of the Philippines, claimed the Marianas for Spain. Spain, however, did not actively interfere in the life of the archipelago until 1668 - more than 100 years later - when Spain occupied the Marianas as a support base for its galleons trading between Mexico and the Philippines.

The Caroline and Marshalls archipelagos, further away from the principal trade route, were not originally claimed by Spain and received few visits by other foreign powers. It was not until the early nineteenth century that American whaling ships began frequenting the archipelagos with some regularity and American Protestant missionaries arrived to propagate their religion. By the 1860s, British and German traders were also visiting the islands to purchase copra which had become a major commodity on the world market. Threatened by Britain's and Germany's interest in the copra trade, Spain finally decided to take control of the Carolines and the Marshalls as well. In 1873, Spain issued a declaration requiring all merchant ships sailing for those island groups to obtain its permission and to pay Spain customs duties and licensing fees. Spain officially annexed the two archipelagos in 1874.

Germany and Britain refused to recognize Spanish control over the Marshalls and the Carolines. In 1885, the dispute was submitted for arbitration to Pope Leo XIII who issued a papal bull recognizing Spanish sovereignty on the condition that Spain establish its presence in the islands and allow all powers to trade freely.

Following this decision, Spain immediately established a presence in the Carolines. Troops and missionaries arrived in 1886, an administrative centre was established on Ponape (now Pohnpei) and Protestant missionaries and teachers were expelled. Spain made no effort to install a presence in the Marshall Islands, however, with the result that in 1885 Germany moved into the vacuum and declared the area a German protectorate. Thereafter, the two countries shared control of Micronesia until 1898 when, following its defeat in the Spanish-American War,

Spain ceded Guam, the southernmost island in the Marianas group, to the victorious United States and sold the rest of its possessions in Micronesia to Germany. Germany controlled the Territory until the outbreak of the First World War when, except for Guam, Micronesia was occupied by Japan.

In 1921, after the Treaty of Versailles, Japan's control of the Territory was endorsed by the League of Nations which placed Micronesia under a League of Nations mandate. Unlike the previous colonial powers, Japan began to develop the Territory's infrastructure, promote agriculture and fishing and encourage extensive immigration. Japanese immigrants, however, rather than Micronesians, were the intended beneficiaries of the new prosperity. By 1938, in fact, approximately 58 per cent of the Territory's population were Japanese settlers for whom native Micronesians constituted a source of labour. It may be noted that in 1935, Japan withdrew from the League of Nations and began to fortify and develop the islands for military purposes which would have been incompatible with its responsibilities as a mandatory power.

During the Second World War, by virtue of its strategic location, Micronesia was a focal point in battles for control of the western Pacific between the Western Allies and Japan, and suffered considerable destruction. In 1944, Japan lost control of the Marshall Islands and the Marianas to the Allies but, except for the atoll of Ulithi, the Caroline Islands remained under Japanese control until the end of the war in 1945.

In 1947, as noted above, the islands were placed under United States administration as a strategic Trust Territory. The Administering Authority was granted full powers of administration, legislation and jurisdiction and was charged with promoting the economic, social and educational development of the indigenous population and their progressive advancement to self-determination according to the freely expressed wishes of the people. Like all Administering Authorities, the United States was obliged, in accordance with the Charter of the United Nations, to encourage respect for fundamental rights and human freedoms.

The quality of United States administration of the Territory is a subject of controversy. Between 1946 and 1958, Bikini and Enewetak atolls in the Marshall Islands were the sites of extensive nuclear tests, necessitating the involuntary evacuation of their populations to other atolls. The radioactive contamination of Bikini and Enewetak, which made them uninhabitable, and the exposure to radiation of Micronesians on other atolls, particularly Rongelap and Utrik, have been issues

of major concern ever since. 7/ The United States was also criticized for allegedly neglecting the Territory's economic and social development and for contributing to the creation of island slums. Alleged defects of its administration notwithstanding, the United States ultimately carried out its obligations to promote self-government for the Territory to the satisfaction of the United Nations and the international community as a whole.

II. BASIC INFORMATION

The four entities that emerged from the Trust Territory of the Pacific Islands have widely differing characteristics. The Republic of the Marshall Islands consists of over a thousand narrow and flat small coral islands and islets which stretch over more than 1,280,000 square kilometres of ocean and have a total land area of 179 square kilometres. There is little fertile topsoil and no rivers or underground water supplies. Thus, aside from coconuts, pandanus and breadfruit, few crops grow. The local economy consists mainly of copra production, tourism and handicrafts, augmented by the output of a few small-scale industries. The main sources of revenue are payments from the United States under the Compact of Free Association and rent payments from the United States for the use of Kwajalein Atoll as a military base. 8/ In 1989, the population was estimated at 42,000 with most people living on Majuro Atoll, the political and economic centre, and Kwajalein.

The Federated States of Micronesia has 607 islands, with a total land area of 436 square kilometres sprinkled across more than a million square miles of the Pacific; only about 65 islands are inhabited. It is divided into four states: Pohnpei which has nearly half the land area, and Kosrae, Truk and Yap, among which the rest of the area is almost equally divided. 8/ In 1989, the population of the Federated States of Micronesia was 102,143.

The cultures, traditions and identities of all four States of the Federated States of Micronesia differ considerably. While the people are all Carolinians, they speak eight major indigenous languages among them and no two States have the same tongue. English is the only common language. What ties the people together, in fact, is their political affiliation as the Federated States of Micronesia. 8/

In the economic field, many people in the Federated States of Micronesia still rely on subsistence farming and fishing; the largest single employer is the Government, most jobs being in the social services. After United States aid under the Compact of Free Association, the largest source of territorial revenue is the sale of tuna fishing rights within the 200-mile limit. 8/

Palau, also part of the western Carolines, consists of the high islands of Babeldaob, Koror, Peleliu and Angaur; the low coral atoll of Kayangel; and the Rock Islands, of which there are more than 200. Except for Kayangel and Angaur, all the islands are inside a single barrier reef. Babeldaob is the largest island in Micronesia after Guam, with an area of 392 square kilometres; all the other Palauan islands together total 95 square kilometres. 8/ Of all the Micronesian entities, Palau has the richest flora and fauna both on land and underwater but, according to the 1991 report of the Administering Authority, it has the smallest population - 15,122 - with the majority concentrated in Koror. 9/

The Commonwealth of the Northern Marianas comprises all the 14 islands of the Marianas archipelago (except Guam), which has a separate political identity. The total land mass is 471 square kilometres, of which Saipan comprises 120 square kilometres; Tinian, 100 square kilometres; and Rota, 82 square kilometres. The population in 1991 was estimated at 23,494. Roughly 75 per cent of the population is Chamorro. Tourism is the largest industry; however, as elsewhere in Micronesia, the main source of income is United States revenues. 8/

III. EVOLUTION OF CONSTITUTIONAL GOVERNMENT, 1947-1978 10/

Responsibility for the administration of Micronesia was originally vested in the United States Secretary of the Navy, but in 1951 it was transferred from the military to the Department of the Interior which, except for the period 1952 to 1962, administered the Territory until 1987 through a High Commissioner located on Saipan (Marianas).

Between 1947 and 1950, the Administering Authority established 116 municipalities drawn up along traditional geographical or political lines with elective or traditional forms of government, depending on the circumstances of each municipality. Elective District legislatures with limited functions were created for Palau in 1955; for Truk in 1957; for Ponape (now Pohnpei) in 1958; for the Marshalls in 1958; for Yap in 1959; and for the Marianas in 1962. 10/

Although the Administering Authority began immediately to grant limited governmental functions to the people on the municipal and district levels, there was little attempt to involve Micronesians in the territorial Government until 1964, when the Administering Authority established the Congress of Micronesia to legislate on subjects of local application on a territory-wide basis. The Congress was an elected bicameral body with both houses having identical powers; the 12-member House of Delegates was composed of two members from each district, and the

General Assembly, of 21 members apportioned among the districts according to population. Reflecting continuing United States control, the High Commissioner appointed by the United States was authorized to veto any bills passed by the Congress, while bills passed over the High Commissioner's veto were subject to approval or disapproval by the Secretary of the Interior.

The Congress of Micronesia was the sole legislative authority in the Territory (except for the Northern Mariana Islands which was separated from the Territory for administrative purposes in 1976) until 1978 when it was dissolved by the Secretary of the Interior.

From the establishment of the Congress onward, the Territory's constitutional development and its future political status developed as two separate, although interrelated, issues.

The Congress began to consider the question of the Territory's future political status shortly after it first convened, when it established a Joint Committee on Future Status composed of representatives from all the districts. In 1969, the Joint Committee recommended that the Territory should become either self-governing in free association with the United States, or completely independent. Although the United States which favoured the status of free association entered into negotiations on the specific terms of a Compact of Free Association with the Joint Committee, the two sides did not reach agreement for some time. Complicating matters, in February 1971, the Northern Marianas District Legislature, which favoured a closer relationship with the United States than that provided for by free association, voted to hold separate talks with the Administering Authority on the attainment of commonwealth status. On 17 June 1975, a plebiscite was held in the Northern Marianas in which the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America 11/ was approved by 78.8 per cent of the voters. The United States then entered into a separate arrangement with the Northern Marianas which was subsequently not involved in the political status negotiations with the rest of the Territory. The Covenant was approved by the Congress of the United States on 24 March 1976.

Pursuant to a proclamation issued by the President of the United States, certain sections of the Covenant came into force on 9 January 1978, with the remaining sections to take effect upon the termination of the Trusteeship Agreement. The President, however, reserved the right "to suspend the application of any provision of law to or in the Northern Mariana Islands until the termination of the Trusteeship Agreement". 10/

A. Emergence of the four entities 10/

After the separation of the Northern Marianas, it was generally expected that the balance of the Territory, collectively referred to as the Federated States of Micronesia, would attain self-government as one political unit. In 1978, however, the Federated States of Micronesia was partitioned into three entities following a referendum under United Nations observation where some districts approved a draft constitution providing for a federal form of government prepared by the Congress of Micronesia, and others voted against it. 12/ Reports indicated that the districts that rejected the draft constitution did so because of fear of domination by more populous and less prosperous islands. 10/

In September 1978, the Secretary of the Interior, with the consent of all the districts, issued an order separating Palau and the Marshall Islands, which had voted against the draft constitution, from each other and from Yap, Truk, Ponape (now Pohnpei) and Kosrae, the latter group collectively inheriting the appellation Federated States of Micronesia. Subsequently, the Congress of Micronesia was abolished and separate interim legislatures were established for Palau, the Marshall Islands and the reconstituted Federated States of Micronesia, the latter taking for its own the constitution prepared by the Congress of Micronesia. 10/

Partitioning Micronesia initially raised serious concerns at the United Nations where the physical integrity of a territory under trusteeship had theretofore been taken for granted as a prerequisite for political evolution. This concern, however, gradually dissipated. In 1973, for example, the Trusteeship Council expressed regret "that the situation should have developed to a point where Mariana Islands District might have a different political status from that of the rest of the Territory", 13/ while in 1977 the Council affirmed its conviction that the political unity of the Caroline Islands and the Marshall Islands should, if possible, be maintained. 14/ In 1978, however, the Council, although reiterating these views, added that it recognized that it was ultimately for the Micronesian people themselves to decide upon their future political relations with each other. 15/

B. Constitutions of the four entities

Commonwealth of the Northern Mariana Islands 10/

The Constitution of the Commonwealth of the Northern Marianas, which was popularly approved in March 1977, provides for a presidential form of government with the executive branch headed by a governor and a lieutenant governor elected for a four-year term; a bicameral legislature consisting of a Senate and House of Representatives with identical powers; and an independent judiciary. There is a bill of rights enforceable by the courts. The first elections under the Constitution were held in December 1977.

As a Commonwealth of the United States, the Northern Marianas has authority over its own internal affairs, while the United States, which has sovereignty, is responsible for foreign affairs and defence. The United States Congress may legislate for the Commonwealth as if it were a state and, except in certain cases, may unilaterally alter the relationship; however, commonwealth status may be terminated only by mutual consent. The inhabitants of the Commonwealth are United States citizens but they have neither the right to vote in United States presidential elections nor to have a voting representative in the United States Congress. Approximately 15 per cent of the total land area of the Commonwealth, or about 7,500 hectares, is reserved for United States defence purposes by a 50-year lease, renewable for another 50 years.

Federated States of Micronesia 10/

The draft constitution prepared by the Congress of Micronesia and adopted by the Federated States of Micronesia provides for a federal system of government with power shared among national, state and local governments. The President and the Vice-President are elected by Congress from among its members for a term of four years; they are not, however, responsible to that body. The Congress itself is composed of one member elected from each State to serve a four-year term, and additional members elected from congressional districts in each State on the basis of population, who serve for two-year terms. A State may provide for one of its seats to be set aside for a traditional leader. Passage of a bill into law requires the approval of a two-thirds majority of all members on a first reading, followed by the

approval of two thirds of all the state delegations on a second reading on another day. The President has the right to veto bills, subject to a congressional override by an affirmative vote of three fourths of all the state delegations. There is a Supreme Court presided over by a Chief Justice appointed by the President with the approval of Congress. There is an enforceable bill of rights.

The Constitution provides for a 200-mile maritime zone; prohibits agreement for the "use of land for an indefinite term"; and forbids "radioactive, toxic chemicals, or other harmful substances" from being "tested, stored, used or disposed of within the jurisdiction of the Federated States of Micronesia without the approval of the Government of the Federated States of Micronesia."

Concerning public finance, the Constitution empowers the Congress to impose import taxes, duties and tariffs, as well as a national income tax, with not less than 50 per cent of the revenue from the latter to be paid into the treasury of the State where it was collected. The revenue derived from the exploitation of mineral resources on the ocean floor is equally distributed between the national Government and the appropriate state Government; foreign assistance is distributed equally between the national and state Governments.

On 27 March 1979, congressional elections were held in the Federated States of Micronesia. Convening on 10 May, the Congress proceeded to elect a President and Vice-President who would function under the umbrella of the United States Secretary of the Interior through the Territory's High Commissioner.

The Republic of the Marshall Islands 10/

In December 1978, the Marshall Islands Constitutional Convention adopted a constitution providing for a modified parliamentary system of government, which was approved by 63.8 per cent of the voters in a referendum held on 1 March 1979. There is a president elected by a majority of the members of Parliament (Nitijela) to which the President, together with his cabinet, is responsible. The President must resign if an absolute majority of the Nitijela passes a motion of no-confidence in him.

The Nitijela is a single chamber legislature, with 33 members, elected for four years but may be dissolved earlier by the President in accordance with the terms of the Constitution.

The Constitution provides for a High Court with unlimited original jurisdiction as well as appellate jurisdiction over cases originally filed in subordinate courts. The Supreme Court serves as the final court of appeals. There is an enforceable bill of rights.

Palau

After its rejection of the Congress of Micronesia draft constitution, Palau was temporarily administered under an arrangement whereby executive power was vested in the High Commissioner, judicial power in the Trust Territory judiciary established in 1952, and legislative power in the interim legislative body created by order of the Secretary of the Interior in September 1978 after the dissolution of the Congress of Micronesia. 10/

In July 1978, the Palau District Legislature established a constitutional convention of its own which, in April 1979, adopted a proposed constitution providing for a federal system of government. Executive power would be vested in a President and Vice President and there would be a Council of Chiefs consisting of a traditional chief from each State chosen in a traditional manner to advise the President on matters concerning traditional laws and customs. Legislative power would be vested in the Olbiil Era Kelulau, a popularly elected bicameral legislature composed of a House of Delegates and a Senate which would have equal powers. There would be a Supreme Court composed of both appellate and trial divisions. The constitution also included a bill of rights. 10/

Like the Constitution of the Federated States of Micronesia, the Palauan draft constitution provided for the creation of a 200-mile maritime zone, imposed prohibitions on the use, testing, storage and disposal of nuclear, chemical, gas or biological weapons by the United States and laid down tight restrictions on the acquisition of land for United States military purposes. 10/ A further provision which was the cornerstone of the ensuing disagreement with the United States, stipulated that the restrictions placed on United States nuclear activities could not be lifted without the approval of 75 per cent of the voters in a referendum. Although the United States objected vigorously to this provision as infringing on the prerogatives that it would be granted under the Compact of Free Association, the constitution was approved by 92 per cent of the Palauan people in a referendum on 9 July 1979 and by 78 per cent of the population in another referendum held on 14 July 1980.

IV. COMPACT OF FREE ASSOCIATION

In April 1978, representatives of the Marshall Islands, Palau and the Federated States of Micronesia, at a meeting at Hilo, Hawaii, accepted a statement of agreed principles for free association as the outline for their future political relationship with the Administering Authority. The statement provided that the population of the three entities would "enjoy full internal self-government" while the United States would maintain full authority and responsibility for security and defence matters for a period of at least 15 years, subject to renegotiation. The agreement could be terminated by either side and Micronesians would have the authority and responsibility for conducting their own foreign affairs and controlling the disposition of their own marine resources. However, should the agreement be terminated unilaterally by the Micronesians, the United States would no longer be obligated to provide the same amount of economic assistance as initially agreed upon (see below). 16/

In the conclusions and recommendations it adopted at its forty-fifth session in 1978, the Trusteeship Council noted that the Hilo Principles represented a series of guidelines upon which a final agreement on political status was to be reached, but reiterated that the Micronesian population continued to retain the right to choose among the fullest range of political options, including independence. The Trusteeship Council stated that it did not want to make precise recommendations on the future political status of the various Micronesian entities and reiterated its view that the status of free association was an option that was not incompatible with the Trusteeship Agreement, provided that the populations concerned had freely accepted it. 15/

Negotiations concluded in 1982 with the signing of the Compact and its related multilateral and bilateral agreements by all three entities. The Marshall Islands, Palau and the Federated States of Micronesia signed the Compact and related agreements on 30 May, 26 August and 1 October 1982, respectively.

A. Terms of the Compact

The terms of the Compact as originally agreed to were as follows:

In the preambular part, the Compact recognized that the people of the Trust Territory of the Pacific Islands "have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their

constitutions and forms of government". Article 1 declared that the people of the freely associated states would be self-governing; once the Compact became effective, the laws of the United States would cease to apply to them. 10/

The United States would retain "full authority and responsibility for security and defence matters in or relating to Palau, the Marshall Islands and the Federated States of Micronesia", including the option to establish and use military areas and facilities under specific arrangements set forth in separate agreements which would come into effect simultaneously with the Compact. The Governments of the three Associated States would "sympathetically consider" any request by the United States for additional military areas and would refrain from actions which the Government of the United States determined, after consultation with those Governments, to be incompatible with its authority and responsibility for security and defence matters. The United States might conduct activities and operations necessary for the exercise of its defence responsibilities but, unless otherwise agreed, would refrain from conducting any test or discharge of nuclear, chemical or biological weapons. Limitations were also laid down on the right of the United States to store toxic chemical weapons and radioactive and toxic chemical materials intended for weapons use. Joint committees would be established to consider disputes concerning defence and security matters. 10/

The Compact recognized the capacity of the three Governments to conduct their own foreign affairs, including matters relating to the law of the sea and marine resources; to enter into commercial, diplomatic, economic and trade relations; and to conclude treaties and other international agreements. However, the three Governments should "consult in the conduct of their foreign affairs with the Government of the United States". The United States would support applications by the three Governments for membership or participation in regional and international organizations as might be mutually agreed upon. 10/

The Compact established the right of citizens of Palau, the Marshall Islands and the Federated States of Micronesia to enter the United States and work there and established reciprocal rights for citizens or nationals of the United States. Citizens of the three States would be eligible to volunteer for service in the Armed Forces of the United States but would not be subject to conscription as long as they were not permanent residents of the United States. 10/

As regards economic and financial relations, the Compact spelled out the amounts that would be provided to the entities by the United States for a period of 15 years from the effective

date of the Compact (see below). It provided that the annual expenditure of the grant amounts specified for the capital accounts should be in accordance with overall economic development plans provided by the Governments of the Associated States and concurred to by the United States, subject to amendment. The three Governments would report annually to the President and Congress of the United States on the implementation of the plans and the need for any additional economic assistance in the event of exceptional or adverse economic circumstances, it being understood that the United States was not committed to supporting additional assistance. The three Associated States would be treated as insular possessions of the United States for the purpose of assessing import duties on their products. 10/

Regarding approval of the Compact, it was provided that plebiscites would be conducted simultaneously in the three entities; the Compact would be considered approved in the entities where a majority of the valid ballots cast were in favour. The Compact could be amended by mutual consent, either by all four signatories, when appropriate, or by the United States and one or more of the Associated States. 10/

Termination of the Compact might take place unilaterally or by mutual consent. In case of termination mutually agreed upon, economic assistance by the United States would continue on a mutually agreed basis. If the United States terminated a Compact unilaterally, the provisions concerning grant assistance and security and defence matters would remain in effect nonetheless for 15 years. For the Compact to be terminated unilaterally by one of the Associated States, there would need to be a plebiscite which might be observed by the United States and/or by a mutually-agreed-upon third party. Upon receiving notice of intent to terminate, the Government of the United States would consult promptly with the terminating Government regarding their future relationship and to determine the level of economic assistance to be given by the United States for the remainder of the 15-year period, that amount never to be less than 50 per cent of the amount laid down in the Compact. However, certain sections of the Compact, including those dealing with security and defence relations, could not be terminated for the first 15 years. 10/

The 15-year treaty would give the Federated States of Micronesia $60 million annually for the first five years, $51 million annually for the second five years, and $40 million annually for the remaining five, all adjusted for inflation. 10/ In exchange, the United States would have the option to establish and use military areas and facilities which would be exempt from

local taxes; there would be free passage for United States ships and planes and the storage of nuclear weapons would be allowed. The Federated States of Micronesia Government would have no authority to revoke these military provisions before the original 15-year term had expired. 17/

The Compact would bring the Marshalls $1 billion in United States economic aid over 30 years, in exchange for which the United States would have the use of Kwajalein Atoll over the same period. Additionally, the Compact would terminate further financial claims from Bikinians who would receive an additional $75 million over 15 years for the destruction of their atoll. Other Marshallese who suffered radiation poisoning would get about $190 million in exchange for agreeing not to pursue further claims against the United States. 18/

Palau would receive about $428 million in United States financial assistance over the first 15 years from the date the Compact came into effect (nearly $30,000 per capita) in exchange for granting the United States the right to use one third of the Territory for military purposes for 50 years, plus permanently denying the use of Palau to ships of other countries without United States consent. 19/

B. Approval of the Compact and subsequent developments

The approval of the Compact and its related agreements were accepted by the majority of voters in the Federated States of Micronesia and the Marshall Islands. In Palau, however, in a referendum on 10 February 1983, only 62 per cent of the population voted in favour of the Compact, not the 75 per cent required by the Palauan Constitution (see above) because of the conflict regarding nuclear provisions. In a second referendum held on 4 September 1984, only 66 per cent of the voters approved the proposed Compact, still below the constitutionally mandated 75 per cent.

At its fifty-second session in 1985, the Trusteeship Council exhorted the Administering Authority and Palau to look for a mutually acceptable solution that would make it possible to bring the Compact into effect. 20/

Although Palau had not adopted the Compact, in 1985 the United States Congress considered the Compacts for the Marshall Islands and the Federated States of Micronesia without waiting for Palau. Aware that its deadlock with the United States might slow down the termination of the Trusteeship Agreement for the other entities which were eager to attain their new status, the Government of Palau indicated that, despite its hesitation at

being the sole component remaining under Trusteeship, it supported termination of the Trusteeship Agreement for the remainder of the Territory.

The year 1986 was a watershed in the partial termination of the Trusteeship Agreement. Propelling events, the Trusteeship Council on 28 May 1986 adopted resolution 2183 (LIII), in the preambular part of which it acknowledged the establishment of constitutional governments in all the entities comprising the Trust Territory and noted both the recommendation of the United Nations Visiting Mission in 1985 that the Trusteeship Agreement should be terminated as early as possible, and the desire of the Trust Territory Governments towards that end. In the operative paragraphs, the Trusteeship Council reaffirmed the conclusions of the 1985 Visiting Mission that the peoples of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia and Palau had "freely exercised their right to self-determination", choosing commonwealth status in the case of the Northern Marianas and free association in the case of the Marshall Islands, the Federated States of Micronesia and Palau. The Council set the date of 30 September 1986 for the full coming into force of the Compact and the Commonwealth Covenant for the three entities and declared that the Administering Authority had fulfilled its obligations under the Trusteeship Agreement.

In a letter dated 23 October 1986, the Administering Authority notified the Secretary-General that the status of free association would become fully effective in the Marshall Islands on 21 October 1986 and in the Federated States of Micronesia on 3 November 1986. Commonwealth status would come into force in the Northern Mariana Islands on 3 November 1986. 21/ The Compacts were signed into federal law by the President of the United States on 14 January 1986. In the case of Palau, it was decided to hold yet another referendum on a modified version of the Compact agreed upon by the two parties on 10 January 1986. The revised Compact was put to the vote in a referendum observed by the United Nations on 21 February 1986. 22/

The difference between the 1983 and the 1986 versions of the Compact for Palau involved 32 modifications affecting almost every title, in particular the articles dealing with foreign affairs, grant assistance, and defence treaties and international security agreements. As regards the nuclear issue, the revision provided that the Administering Authority would not use, test, store or dispose of nuclear and other harmful substances in Palau in conformity with the Palau Constitution. However, since the United States would have responsibility for defence, it would have the right to operate nuclear-capable or nuclear-propelled vessels and aircraft within the jurisdiction of Palau. 19/

The modified Compact was approved by a 72 per cent majority of the Palauan people, still short of the 75 per cent requirement.

Palauans held further plebiscites on the revised Compact in December 1986 23/ and June 1987 24/, both of which were observed by United Nations visiting missions. The revised Compact obtained a 66 per cent majority in December and 68 per cent in June, still not a sufficiently high percentage for implementation.

On 16 July 1987, the Palauan House of Delegates decided to revise the Constitution to reduce the size of the majority needed - from 75 per cent to 50 per cent - to override the nuclear provisions. In a referendum held on 4 August 1987, this constitutional amendment received 73 per cent of the popular vote and was said to have been adopted. In view of the apparently amended constitution, yet another referendum on the Compact was held on 20 August 1987. The Compact was also approved by a 73 per cent majority, more than sufficient, under the amended Constitution, for its adoption. 25/

The legality of the process used to revise the Constitution as well as that of the referendum to adopt the Compact was challenged in the Palauan courts by opponents of the Compact, leading to unaccustomed outbreaks of violence. In the ensuing climate of tension, the plaintiffs first withdrew their lawsuit, then reinstated it and subsequently withdrew it again. Eventually, however, the tension subsided giving the plaintiffs a further opportunity to reinstate their suit and to give the Court an opportunity to rule. On 23 April 1988, on the basis of the plaintiffs' argument, the Palauan Supreme Court ruled that the 4 August 1987 referendum was invalid and that the original Constitution would remain in place. As a consequence of the invalidation of the process to revise the Constitution, the adoption of the Compact was also invalidated. 26/ It was indicated that following this setback, the Administering Authority would not engage in further bilateral revisions of the terms of the Compact for Palau.

In 1989, another attempt to break the deadlock was made with the signing on 26 May of an agreement concerning special programmes related to the entry into force of the Compact of Free Association between the Government of the United States and the Government of Palau (Guam Accord). The Accord provided additional economic assistance to Palau contingent on the approval of the Compact. 27/

In its 1989 annual report, the Trusteeship Council welcomed the signing of the Guam Accord and reiterated its hope that the process of the approval of the Compact for Palau could soon be concluded. 27/

V. PARTIAL TERMINATION OF THE TRUSTEESHIP AGREEMENT

Before the Security Council took up the question of partial termination of the Trusteeship Agreement, yet another referendum on the Compact of Free Association, the seventh, was held in Palau on 6 February 1990 in the hope that the Compact would finally be approved. However, just over 60 per cent of those voting favoured adoption of the Compact, less than at any previous time. In its report, the United Nations Visiting Mission to observe the referendum said that the population had seemed weary at the prospect of yet another ballot and had shown very little interest in the outcome. 28/

On 22 December 1990, in the absence of any signs of progress in Palau, the Security Council, at the request of the Trusteeship Council, met to consider the termination of the Trusteeship Agreement for the Commonwealth of the Northern Marianas, the Federated States of Micronesia and the Republic of the Marshall Islands. 29/ The Security Council had before it letters from the Trusteeship Council, 30/ Papua New Guinea, 31/ Cuba, 32/ Vanuatu, on behalf of States Members of the United Nations that are also members of the South Pacific Forum, 33/ and a draft resolution submitted by China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States. 34/ The Pacific States commended the early termination of the Trusteeship Agreement on the grounds that the entities had made clear their wishes regarding their future status and that the lack of Security Council action prevented some States from recognizing the Federated States of Micronesia and the Marshall Islands as sovereign self-governing entities.

Rejecting a move by Cuba to have the vote postponed, the Security Council, without debate, adopted resolution 683 (1990) by 14 votes to 1 at the above meeting. The Republic of the Marshall Islands and the Federated States of Micronesia were admitted as members of the United Nations on 17 September 1991.

The resolution stated that the Security Council was satisfied that the peoples of the three entities had freely exercised their right to self-determination, and that it had determined "that the objectives of the Trusteeship Agreement have been fully attained, and that the applicability of the Trusteeship Agreement has terminated, with respect to those entities."

VI. QUESTION OF PALAU

At the fifty-seventh session of the Trusteeship Council in 1990, representatives of the Administering Authority reiterated that the political future of Palau was up to its people who would decide when and if a further vote on the Compact would be taken. Until such time as the people of Palau ratified the Compact in accordance with their own constitutional provisions or resolved their future status in some other way, the United States would continue to fill its role of trustee. In this connection, heeding the recommendations of the Trusteeship Council and various other agencies, including the United States Congress which had urged it to play a more active role in guiding and shaping the administration of Palau during the interim period, the Department of the Interior would send a resident representative to Palau to provide advice and direction to the local government, especially concerning the budgetary process. 35/

A Palauan spokesman indicated to the Trusteeship Council that the voters had not rejected the Compact of Free Association as a political status option. It was incumbent on the leadership of Palau to guide the people to the position of an internally self-governing nation freely associated with its former trustee; the leadership was, in fact, currently reviewing possible options with respect to the resolution of Palau's future political status. 36/

During 1991, no progress was made toward resolving the Palau stalemate. At the fifty-eighth session of the Trusteeship Council, the Administering Authority reaffirmed its readiness to assist Palau in resolving the question of its political status but stressed that it remained the responsibility of the people of Palau to determine what status they wished to have and to take the necessary action to have the Trusteeship Agreement terminated. The Administering Authority, reiterating that it would prefer Palau to choose free association, stated that it would of course accept a decision on the part of Palau to become independent. 37/

In fulfilment of its obligations under the Charter, the Trusteeship Council, meeting on 19 December 1991, decided to send a regular visiting mission to Palau in March 1992 to examine current conditions in the Territory. 38/ After its visit to the Territory, the Mission reported that it had observed a high degree of political awareness among the Palauan people and a desire to have the question of future political status resolved as soon as possible. While free association remained the

preferred status, the main issue standing in the way of the adoption of the Compact remained the incompatibility between the Compact's nuclear provision and the 75 per cent requirement of the Constitution. The military land demands of the United States and the 50-year duration of the agreement also posed problems. 39/

The Mission said that it had been told by the Government of Palau that it had proposed to the Administering Authority in October 1991 that the nuclear provision be separated from the balance of the Compact; that the military land requirements be reassessed; and, that the term of the Compact be reduced from 50 to 15 years. In response, however, the Administering Authority had again informed Palau that the nuclear provision was an integral part of the Compact and that no alterations could be made. The Mission had also learned that in another effort to break the stalemate, the Palauan Government was considering holding another referendum to amend the Constitution. 40/

According to information received from the Office of the President of the Republic of Palau, on 20 August 1992, the President of Palau signed legislation authorizing the holding of a referendum on 4 November 1992 on a constitutional amendment that would allow the Compact to be approved by a simple majority.

If the amendment were approved - by a simple majority of the voters in 12 of the 16 Palauan States - an eighth referendum on the Compact would be held.

The referendum was held on 4 November 1992. The voters approved the constitutional amendment lowering the Compact approval requirement from 75 per cent to "50 plus one per cent". As of 1 March 1993, a legal challenge to the referendum remains to be heard and decided. 41/

Notes

1/ Trusteeship Agreement for the Trust Territory of the Pacific Islands (United Nations publication, Sales No. 1957.VI.A.1).

2/ Ibid., articles 5 and 13.

3/ Decolonization bulletin, No. 16, April 1980, sect.III, B.

4/ Ibid., sect. III, A.

5/ Official Records of the Security Council, Forty-first Year, Special Supplement No.1 (S/18238), part II.

6/ Decolonization bulletin, No. 16, sect. II.

7/ Ibid, sect. IV.

8/ Glenda Bendure and Ned Friary, Micronesia, a Travel Survival Kit, 1st ed. (Australia, Lonely Planet Publications, April 1988).

9/ 1991 Trust Territory of the Pacific Islands, 1 October 1990 to 30 September 1991, forty-fourth annual report to the United Nations on the administration of the Trust Territory of the Pacific Islands, transmitted by the United States of America to the United Nations pursuant to Article 88 of the Charter of the United Nations (Department of the Interior).

10/ Decolonization bulletin, No. 16, sect. III.

11/ For the text of the Covenant, see Official Records of the Trusteeship Council, Forty-second Session, Sessional Fascicle, annexes, document T/1759.

12/ Official Records of the Trusteeship Council, Forty-sixth Session, Supplement No.2 (T/1795) [Report of the United Nations Visiting Mission to Observe the Referendum in the Trust Territory of the Pacific Islands, 1978].

13/ Official Records of the Security Council, Twenty-ninth Year, Special Supplement No.1 (S/11415), para. 321.

14/ Ibid., Thirty-second Year, Special Supplement No.1 (S/12390), para. 544.

15/ Ibid., Thirty-third Year, Special Supplement No.1 (S/12971), paras. 571-593.

16/ Ibid., para.443.

17/ David Stanley, Micronesia Handbook: Guide to the Caroline, Gilbert, Mariana and Marshall Islands, 2nd ed. (California, USA, Moon Publications Inc., April 1991), p. 93.

18/ Ibid., p. 69.

19/ Ibid., pp. 153 and 154.

20/ Official Records of the Security Council, Fortieth Year, Special Supplement No.1 (S/17334), para. 262.

21/ Official Records of the Trusteeship Council, Seventeenth Special Session, Fifty-fourth Session, Eighteenth Special Session, Sessional Fascicle, annexes, document T/1903.

22/ Ibid., Fifty-third Session, Supplement No.2 (T/1885) [Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1986].

23/ Ibid., Fifty-fourth Session, Supplement No.1 (T/1906) [Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, December 1986].

24/ Ibid., Supplement No. 2 (T/1919) [Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, June 1987].

25/ David Stanley, op.cit., p. 154.

26/ Ibid., pp. 154 and 155.

27/ Official Records of the Security Council, Forty-fourth Year, Special Supplement No.1 (S/20843), para. 172.

28/ Official Records of the Trusteeship Council, Fifty-seventh Session, Supplement No.1 (T/1942), para. 24.

29/ S/PV.2972.

30/ S/22008 (also issued as T/1951).

31/ S/22007.

32/ S/22034.

33/ S/22009 (also issued as T/1952).

34/ S/22001.

35/ Official Records of the Security Council, Forty-fifth Year, Special Supplement No.1 (S/22212), para. 78.

36/ Ibid., paras. 27-39.

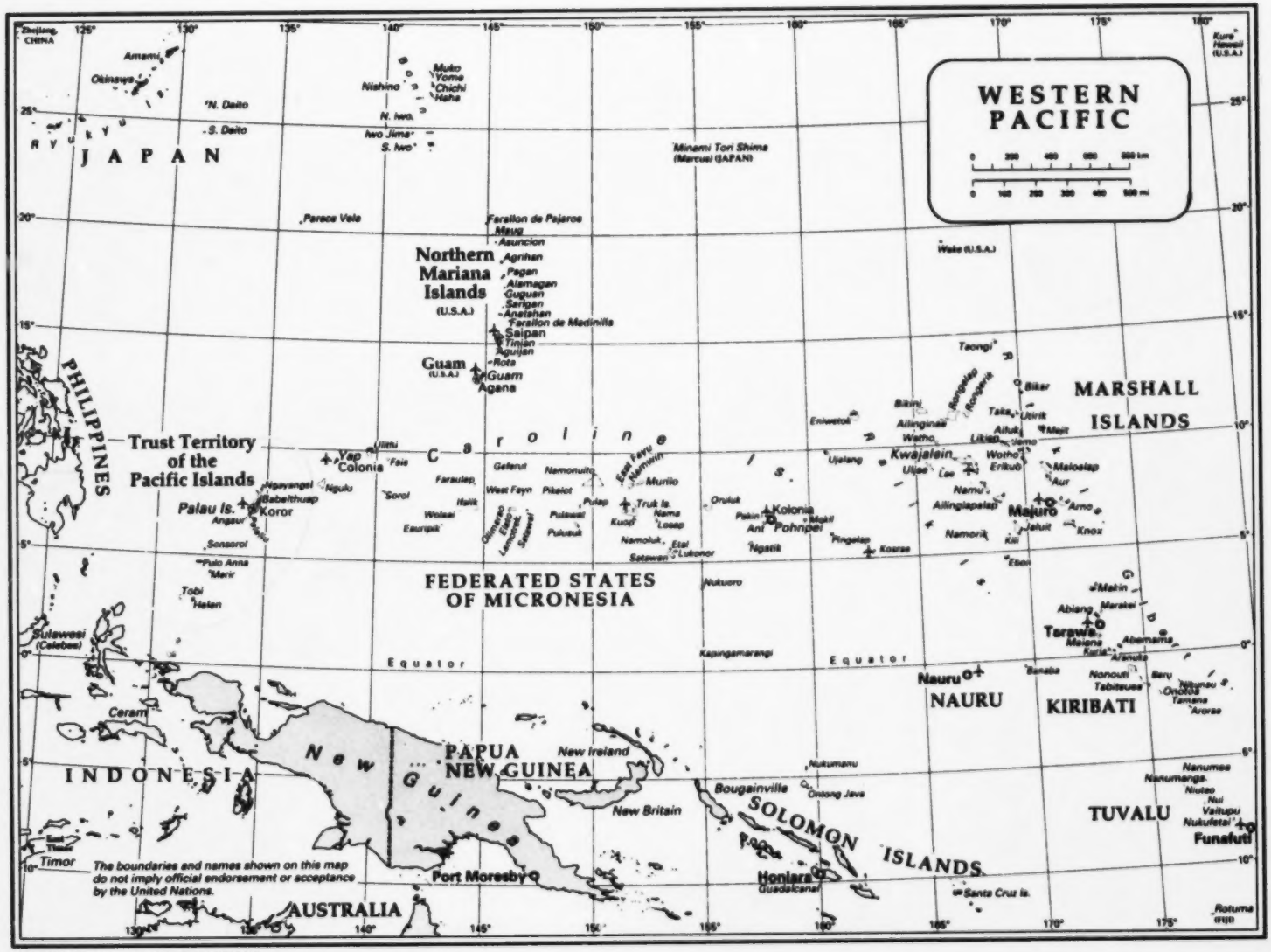
37/ Ibid., Forty-sixth Year, Special Supplement No.1 (S/23554), paras. 70-74.

38/ T/PV.1690.

39/ Official Records of the Trusteeship Council, Fifty-ninth Session, Supplement No.1 (T/1964), paras. 105-108.

40/ Ibid., paras. 33 and 34.

41/ 1992 Trust Territory of the Pacific Islands, 1 October 1991 to 30 September 1992, forty-fifth annual report to the United Nations on the administration of the Trust Territory of the Pacific Islands, transmitted by the United States of America to the United Nations pursuant to Article 88 of the Charter of the United Nations (Department of the Interior), p.97.



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MARCH 1993